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*C. J. ...*

1958

November 10

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CONCORD, N.H.

Mr. James W. Nelson  
Deputy Bank Commissioner  
Bank Commission  
State House  
Concord, New Hampshire

Dear Mr. Nelson:

This is in reply to your letter of November 3, 1958, in which you advise that the Portsmouth Savings Bank failed to have published in some newspaper within thirty days after the election a list of its trustees who had taken the oath of office as required by RSA 384:11. You state that the bank examiner who discovered the omission has reported that the failure to publish the list was the result of neglect.

You have inquired whether or not your Department must bring court action to collect a fine of \$100 under the provisions of RSA 384:12 which provides that "[a] clerk neglecting to make such . . . publication . . . shall be fined one hundred dollars." Our answer is in the negative.

In our view RSA 384:12 must be read in conjunction with RSA 384:21 which provides as follows:

"If in the opinion of the [bank] commissioner any such institution or its officers have persistently violated any provision of law he shall forthwith report the same, with such remarks as he deems expedient, to the attorney-general, who shall immediately institute a prosecution therefor in behalf of the state." (emphasis added)

From the foregoing we conclude that your office is not compelled by law to report a violation of the banking laws or request a prosecution therefor by the attorney general unless there have been persistent violations by the person committing the violation.

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Mr. James W. Nelson

In closing we might observe that in our opinion failure of the clerk of the Portsmouth Savings Bank to make the publication required by RSA 384:11 is punishable under RSA 384:12 even though such failure to publish was not wilful but merely the result of neglect. We believe the decision as to whether or not he should be prosecuted is a matter for the sound discretion of the Bank Commissioner if such clerk has not persistently violated the law in this respect.

Very truly yours,

George T. Ray, Jr.  
Assistant Attorney General

GTR,Jr/lr